

REMARKS

Reconsideration of the above-referenced patent application is respectfully requested in view of the foregoing amendments and remarks set forth herein. Claims 8-12 and 32-33 are pending herein.

Claim 8 has been amended to recite: **An isolated bacterium that produces a compound that comprises anti-inflammation activity and has a molecular weight less than 10 kDa**. Support for this terminology is found at paragraphs 0036 and 0138.

New claims 32-33 are rewordings of claims 30-31 to make them independent claims including the terminology now present in claim 8 as amended herein.

In the Office Action of October 17, 2006, the Examiner took the following actions to which Applicant herein makes response: (1) rejected claims 29-31 under 35 USC 112, second paragraph stating that the claims are defining the compound and not the producing bacterium; (2) rejected claims 8-12 and 29-31 under 35 USC 102(b) as being anticipated by Panigrahi (6,682,744); (3) rejected claims 8-12 and 29-31 under 35 USC 102(e) as being anticipated by Collins et al. (20030166257); (4) rejected claims 8-9, 11-12 and 29-31 under 35 USC 102(b) as being anticipated by Steidler et al. (6,746,671); (5) rejected claims 8-9, 11-12 and 29-31 under 35 USC 102(b) as being anticipated by Steidler et al. (Science article). These rejections are traversed in application to the claims as amended, and consideration is requested of the patentability of claims 8-12 and 32-33 now pending in the application.

(1) Rejection of claims 29-31 under 35 USC 112, second paragraph and statement that the claims are defining the compound and not the producing bacterium

Applicant respectfully submits that claims 29-31 have been withdrawn and independent claims 32-33 corresponding to claims 30-31 have been added to clarify the scope of the claimed invention. Claims 32-33 are therefore submitted to be patentable under 35 USC 112, second paragraph.

(2) Rejection of claims 8-12 and 29-31 under 35 USC 102(b) as being anticipated by Panigrahi (6,682,744)

Applicant respectfully submits that Panigrahi teaches *Lactobacillus plantarum* and *L. salivarius* blocking inflammation by producing proteinaceous secretions, but neither teaches nor suggests an isolated bacterium that produces a compound that comprises anti-inflammation activity and has a molecular weight less than 10 kDa. In fact, the protein secretions disclosed by Panigrahi have "approximate molecular weights of 48 KD and 30 KD" (column 4, lines 34-36) or 20 KD (column 4, lines 45-47).

Applicant therefore submits that claims 8-12 and 32-33 now pending herein are patentable over Panigrahi under Section 102(b).

(3) Rejection of claims 8-12 and 29-31 under 35 USC 102(e) as being anticipated by Collins et al. (20030166257)

Applicant respectfully submits that Collins does not disclose production of particular polypeptides but rather the only references to proteins or peptides that Applicant has been able to find is a statement that *L. salivarius* isolates block inflammatory activity by producing a product that is destroyed by a proteinase and a pronase (paragraph 0030) and that the ingestible carrier is a protein and/or peptide (paragraph 0019). Nothing in Collins teaches or suggests an isolated bacterium that produces a compound that comprises anti-inflammation activity and has a molecular weight less than 10 kDa.

Applicant therefore submits that claims 8-12 and 32-33 now pending herein are patentable over Collins et al. under Section 102(e).

(4) Rejection of claims 8-9, 11-12 and 29-31 under 35 USC 102(b) as being anticipated by Steidler et al. (6,746,671)

Applicant respectfully submits that Steidler et al. (patent reference) teaches use of a *L. lactis* vector containing a plasmid that produces proteins (acid-sensitive anti-inflammatory agents). There is no teaching or suggestion in Steidler et al. of an isolated bacterium that produces a compound that comprises anti-inflammation activity and has a molecular weight less than 10 kDa.

Applicant therefore submits that claims 8-12 and 32-33 now pending herein are patentable over Steidler et al under Section 102(b).

(5) Rejection of claims 8-9, 11-12 and 29-31 under 35 USC 102(b) as being anticipated by Steidler et al.(Science article)

Applicant submits that the arguments presented above with respect to the Steidler et al. patent are also applicable to the Steidler et al. article, and that therefore claims 8-12 and 32-33 are patentable thereover under Section 102(b).

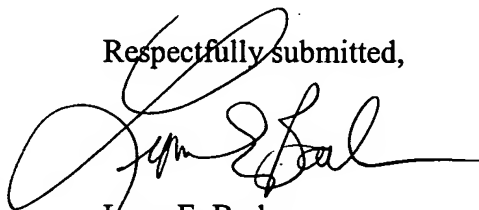
Conclusion

For all the foregoing reasons, claims 8-12 and 32-33 are submitted to be fully patentably distinguished over the cited references and in allowable condition. Favorable consideration is therefore requested.

There are now 7 claims and 5 independent claims in this application. The application as filed had 28 claims and 8 independent claims. It is therefore believed that no fee is required for the presentation of this amendment other than the separately submitted fee for the extension of time. Any additional amounts that may be due for presentation of this amendment should be charged to Deposit Account No. 02-0825 of Applicant's attorney.

If any questions or issues remain, the resolution of which the Examiner feels would be advanced by a personal or telephonic conference with Applicant's attorney, the Examiner is invited to contact such attorney at the telephone number noted below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lynn E. Barber', is written over the typed name and address.

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